

FIRST REGULAR SESSION

# SENATE BILL NO. 334

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time January 22, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1576S.011

## AN ACT

To repeal section 407.400, RSMo, and to enact in lieu thereof two new sections relating to brand extensions for beer products.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 407.400, RSMo, is repealed and two new section  
2 enacted in lieu thereof, to be known as sections 407.400 and 407.412, to read as  
3 follows:

407.400. As used in sections 407.400 to 407.420:

2 (1) **"Appointed wholesaler", wholesaler to whom a brewer or**  
3 **importer granted the exclusive sales territory to a brand from which**  
4 **a brand extension results;**

5 (2) **"Brand", any word, name, group of letters, symbol, or**  
6 **combination thereof, that is adopted and used by a brewer or importer**  
7 **to identify a specific beer product, and to distinguish that beer product**  
8 **from another beer product;**

9 (3) **"Brand extension", any brand that:**

10 (a) **Incorporates all or a substantial part of the unique features**  
11 **of a preexisting brand of the same brewer or importer; and**

12 (b) **Relies to a significant extent on the goodwill associated with**  
13 **that preexisting brand;**

14 (4) **"Franchise" means a written or oral arrangement for a definite or**  
15 **indefinite period, in which a person grants to another person a license to use a**  
16 **trade name, trademark, service mark, or related characteristic, and in which**  
17 **there is a community of interest in the marketing of goods or services at**  
18 **wholesale, retail, by lease, agreement, or otherwise, including but not limited to**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 a commercial relationship of definite duration or continuing indefinite duration,  
20 between a "wholesaler", such wholesaler being a person as defined in this section,  
21 licensed pursuant to the provisions of chapter 311, RSMo, to sell at wholesale,  
22 intoxicating liquor, as defined in section 311.020, RSMo, to retailers, duly  
23 licensed in this state, and a "supplier", being a person engaged in the business  
24 as a manufacturer, distiller, rectifier or out-of-state solicitor whose brands of  
25 intoxicating liquor are distributed through duly licensed wholesalers in this state,  
26 and wherein a wholesaler is granted the right to offer, sell, and distribute within  
27 this state or any designated area thereof such of the supplier's brands of  
28 intoxicating liquor, or all of them, as may be specified; except that, the term  
29 "franchise" shall not apply to persons engaged in sales from warehouses or like  
30 places of storage, other than wholesalers as above described, leased departments  
31 of retail stores, places of original manufacture, nor shall the term "franchise"  
32 apply to a commercial relationship that does not contemplate the establishment  
33 or maintenance of a place of business within the state of Missouri. As used  
34 herein "place of business" means a fixed, geographical location at which goods,  
35 products or services are displayed or demonstrated for sale;

36 [(2)] (5) The term "goods" includes any personal property, real property,  
37 or any combination thereof;

38 [(3)] (6) The term "other property" includes a franchise, license  
39 distributorship, or other similar right, privilege, or interest;

40 [(4)] (7) The term "person" includes an individual, corporation, trust,  
41 estate, partnership, unincorporated association, or any other legal or commercial  
42 entity;

43 [(5)] (8) The term "pyramid sales scheme" includes any plan or operation  
44 for the sale or distribution of goods, services or other property wherein a person  
45 for a consideration acquires the opportunity to receive a pecuniary benefit, which  
46 is not primarily contingent on the volume or quantity of goods, services, or other  
47 property sold or distributed or to be sold or distributed to persons for purposes  
48 of resale to consumers, and is based upon the inducement of additional persons,  
49 by himself or herself or others, regardless of number, to participate in the same  
50 plan or operation; and

51 [(6)] (9) The term "sale or distribution" includes the acts of leasing,  
52 renting or consigning.

**407.412. A brewer or importer, who assigns a brand extension to  
2 a wholesaler, shall offer to assign such brand extension to the**

3 appointed wholesaler. This requirement shall not apply to brand  
4 extensions assigned to wholesalers by a brewer or importer prior to  
5 August 28, 2007. If, prior to August 28, 2007, a brewer or importer  
6 assigned a brand extension to a wholesaler, who was not an appointed  
7 wholesaler, any additional brand extension shall be assigned to the  
8 wholesaler who first had the brand.

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